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5 **IN THE DISTRICT COURT OF GUAM**
6 **TERRITORY OF GUAM**

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8
9 TONY H. ASHTIANI,)
10 Plaintiff,)
11 vs.) CIVIL CASE
12 CONTINENTAL MICRONESIA, INC., et al.,)
13 Defendants.) NO. 02-00032
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17 TRANSCRIPT OF PROCEEDINGS

18 BEFORE

19 THE HONORABLE JOHN S. UNPINGCO
20 Chief Judge

21 SCHEDULING CONFERENCE

22 WEDNESDAY, MAY 7, 2003

23 * * *

24

25 ORIGINAL

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Official Court Reporter
District Court of Guam

1 **APPEARANCES:**

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3 **FOR THE PLAINTIFF:**

4 TONY H. ASHTIANI, Pro se
5 P.O. BOX 12723
6 TAMUNING, GUAM 96931

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8 **FOR THE DEFENDANTS:**

9 CARLSMITH BALL LLP
10 BY: DAVID LEDGER, Esq.
11 ELYZE McDONALD, Esq.
12 134 West Soledad Avenue
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1 HAGATNA, GUAM; WEDNESDAY, MAY 7, 2003; 4:32 P.M.
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4 THE CLERK: Civil Case 02-00032, Tony H.
5 Ashtiani versus Continental Micronesia, Inc., et
6 cetera, et al., Scheduling Conference.

7 Counsel, please state your appearances.

8 MR. ASHTIANI: Good afternoon, Your Honor.
Tony Ashtiani, pro se litigant.

9 THE COURT: Okay.

10 MS. McDONALD: Good afternoon, Your Honor.
11 Elyze McDonald for Continental Micronesia.

12 THE COURT: Okay. There are three motions in
13 this case filed by the plaintiff. Defendant has not
14 filed responses. And the defendant should file -- is
15 ordered to file its opposition, if any, to the three
16 motions by May 30th, 2003. Any reply of the plaintiff
17 shall be filed by June 9th, 2003. Thereafter, if the
18 court deems a hearing is necessary, one will be
19 scheduled. Otherwise, the court will take it on the
20 papers.

21 There have been two proposed scheduling orders
22 and discovery plans submitted to the court in this
23 case. And there are differences, marked differences
24 between the two; however, under the rules, the Local
25 Rules, it appears that the defendant's proposed

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1 schedule is in conformity with that more so than the
2 plaintiff's. And so, the court will accept the
3 scheduling order filed by the defendant as it's in
4 conformity with the Local Rules of practice of this
5 court.

6 The parties also do not agree as to trial
7 dates. Plaintiff wants the trial to begin on January
8 2nd, 2004, whereas the defendant wants the trial to
9 begin on March 22nd, 2004.

10 The plaintiff's scheduling order, in it he
11 wants the pretrial materials, discovery materials,
12 witness list, exhibit list, and designations of
13 discovery responses filed on or before January 16th,
14 2004; however, the trial is to begin under his schedule
15 on January 2nd, 2004. So he can't do the trial without
16 all these other materials that are due after the trial.
17 So that's not correct on his part.

18 In addition, he wants the final pretrial
19 conference to be held on November 21st, 2003, which
20 conflicts with Local Rule 16.7(h) which states that
21 "the final pretrial conference is to be seven days
22 before trial."

23 Both parties, however, agree that the trial
24 will take approximately four days. And is there any
25 reason why both of you cannot agree on a proposed trial

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1 date?

2 MS. McDONALD: Your Honor, can I speak to
3 that?

4 THE COURT: Yes.

5 MS. McDONALD: During our scheduling meeting
6 between the parties, we did agree on the dates that
7 defendant puts in its scheduling order. I believe, and
8 Mr. Ashtiani can speak to that if he has since changed
9 his mind, because he did file his scheduling order
10 before ours, and before we met. So I believe the
11 dates, from my last understanding under the defendant's
12 scheduling order are agreed to between the parties.

13 The nature of the disagreement was basically
14 on the nature of the case description in our scheduling
15 order and the initial disclosure deadline. Those are
16 the only issues that, to my understanding, are in
17 dispute between the parties.

18 THE COURT: Okay.

19 MR. ASHTIANI: Your Honor?

20 THE COURT: Yes, Mr. Ashtiani.

21 MR. ASHTIANI: It's a pleasure being in your
22 court, Your Honor.

23 However, I believe that there's a large gap
24 between the trial date and the date that we had set for
25 friendly -- as far as the discovery is concerned, which

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1 was November 21st, I believe Ms. McDonald had presented
2 to me. I believe three months between that date and
3 the trial date is a large gap, that's why I wanted to
4 kind of close up the gap and maybe, I believe January
5 2nd is not --

6 Actually, I did make a mistake, Your Honor,
7 I apologize to the court for that, I did overlook the
8 21 days failure which is a cause; however, if you can
9 move it up to sometimes in February or late January
10 would be fine. I believe the large gap is undue
11 burden.

12 THE COURT: Anything else?

13 MR. ASHTIANI: Your Honor, the fact that the
14 nature of the case was in dispute is because I had
15 pointed out to Ms. McDonald that there was a -- EEOC
16 issued new "Guidance on Discrimination and Employee
17 Benefits," which the defendant has been selling
18 fraudulent insurance, that is part of the benefits of
19 the employee. For that fact, there is a clause in here
20 that was revised in October 3, 2000, that was released
21 by EEOC, which falls in the umbrella of Title VII,
22 which is a vast title. So for that fact, I believe
23 that the title -- the nature of the case, being
24 employee benefits, it also belongs to this, and that
25 was the dispute all about.

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1 Also with the FMLA, Your Honor, in fact,
2 I do have a piece of document here that states:

3 "Equal protection clause of the Fourteen
4 Amendment in minimizing the potential for employment
5 discrimination on basis of sex while promoting equal
6 employment opportunity for men and women."

7 So with that, Your Honor, FMLA, it is part of
8 the discrimination.

9 THE COURT: What is FMLA?

10 MR. ASHTIANI: The Family Medical Leave Act,
11 Your Honor.

12 THE COURT: Okay.

13 MR. ASHTIANI: I was terminated while I was
14 attending my son. And that's what the case is all
15 about.

16 The FMLA falls under the umbrella of Title
17 VII, Your Honor, and that's what this case is based on.

18 THE COURT: Okay.

19 MS. McDONALD: Your Honor, can I just address
20 that briefly?

21 THE COURT: Yes.

22 MS. McDONALD: Without getting into the
23 merits of the case, basically the disagreement was what
24 Mr. Ashtiani had put in his scheduling order as what he
25 described the nature of the case to be, and he included

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1 the FMLA violation and the fraudulent sale of insurance
2 policy. Neither of those are alleged in the complaint
3 or the amended complaint, and so that is why I didn't
4 want to put that in a scheduling order and that be
5 reflective in any way of us conceding that those are
6 allegations that he has alleged in his complaint.

7 THE COURT: And the solution?

8 MR. ASHTIANI: Your Honor, if I may suggest in
9 this court, respectfully, if I may amend my complaints,
10 that would -- basically would resolve this matter.

11 THE COURT: That's correct.

12 MR. ASHTIANI: And if I do, may I ask you to
13 grant that motion to me, Your Honor?

14 THE COURT: Yes. Well, you know, the court
15 under the Federal Rules, we give permission to amend
16 liberally. So please do so as quickly as you can so
17 that we can zero in on what is the dispute all about,
18 and all the grounds. Let's just look at all the
19 grounds all in shot.

20 MR. ASHTIANI: Thank you, Your Honor.

21 THE COURT: So please do that. And how much
22 time do you need?

23 MR. ASHTIANI: For amended complaint, Your
24 Honor, I do not need much time; however; I did get
25 similar cases and similar amended complaints which

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1 I will follow and I'll make sure that I'm within the
2 rules.

3 The one other issue, Your Honor, is that 14
4 days, per Rule 26(a)(1), it indicates that I have to
5 bring the initial disclosure to the defendant within
6 14 days. I believe with the amended complaint, it will
7 burry me and flood me with paperwork. I ask
8 respectfully from the defendant -- there was a filing
9 with Mr. Vandenberg which I looked at, they had given
10 60 days to the plaintiff to submit their initial
11 disclosure after the conference scheduling --
12 scheduling conference.

13 So I'm not asking for 60 days, Your Honor;
14 however, I ask for 30 days, if possible. I do not want
15 to ask the court for extension and extension over and
16 over. However, I believe with the amended complaint
17 behind me, if I may, ask a little extension on the
18 initial disclosure.

19 THE COURT: Okay. What's your position,
20 Ms. McDonald?

21 MS. McDONALD: First on the amended complaint,
22 Your Honor, I'd ask that the Court first give only
23 permission to file a motion to amend the complaint.

24 And I say that because I believe there may be
25 objections as to whether the complaint alleges new

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1 facts. If it doesn't allege any new facts or any new
2 claims, then of course we would have an objection to
3 the granting of the amendment to the complaint. So
4 we'd like the opportunity to respond to any --

5 THE COURT: But you won't know that until he
6 files his complaint, whether he's alleging new facts
7 or --

8 MS. McDONALD: We don't know that until he
9 files a motion to amend the complaint, and then we have
10 an opportunity to examine what the proposed complaint
11 would look like.

12 THE COURT: No, but we're not -- if he files a
13 motion, it may be in such abbreviated form that it
14 might not give you enough information as to the facts.
15 I've looked at some of his motions; they're really
16 skimpy.

17 MS. McDONALD: That's correct.

18 THE COURT: No offense to you, Mr. Ashtiani.
19 You know, it's a very brief type style of writing. And
20 I realize where you're coming from, it's just that
21 let's get it all in one shot. It's best under the
22 rules we liberally grant leave for you to amend your
23 complaint. I've already done so, so do so.

24 MR. ASHTIANI: Thank you, Your Honor.

25 THE COURT: And then if you wish to make a

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1 motion after he has done so, because then the facts are
2 flushed out in there, or if they're not in there, you
3 would still have that advantage as well, so we won't be
4 going back and forth too often.

5 MS. McDONALD: I understand, Your Honor.
6 Thank you.

7 THE COURT: So why don't we just do that, and
8 then you file your objections.

9 Let me give you a couple of weeks to file, two
10 weeks from today's date to file an amended complaint,
11 because you seem to be in a hurry with this case.

12 What we'll do is we'll adopt the scheduling
13 order of the defendant as of now; it doesn't mean it's
14 set in cement, it's just that, let's see what you've
15 got, okay, and how it might or might not impact the
16 schedule. Okay?

17 Also, I want for your benefit to point out
18 that three months time period, you know, before the
19 trial, that's not -- that's not unreasonable.

20 MR. ASHTIANI: Okay, Your Honor.

21 THE COURT: And one of the reasons for that is
22 we want both sides to be thoroughly prepared with their
23 case and presentation, and also there may be witnesses
24 or experts that either side may like to produce at the
25 trial. And so it gives them time to prepare and

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1 outline their case, and how they're going to examine or
2 cross-examine the witnesses, and what kind of evidence
3 to show, the documentation, the paperwork, and whether
4 they can get the certified copies or authenticated
5 copies of whatever documents they're producing.

6 So, my advice to you, let's just hold off with
7 shortening for now, let's see what kind of documents
8 are going to be flying back and forth between the two
9 of you. No use shortening it and then at the end
10 you're flooded and you come back in and say, I need
11 more time to prepare. So let's just hold it at that.

12 If at the end of all the discovery, you still
13 feel that the three months waiting time is too long,
14 then you can ask for a motion to shorten time; you can
15 file a motion to shorten time, then I'll hear your
16 motion. Okay? Right now, let's just have sort of a
17 rough game plan here, which is what this scheduling
18 order is. Okay? And so, that being the case --

19 And we also have three motions outstanding
20 that I will need to deal with.

21 MR. ASHTIANI: I believe there are two
22 motions, Your Honor.

23 THE COURT: There are two now?

24 MR. ASHTIANI: The one I believe was
25 intimidation and blackmail by the defendant.

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1 THE COURT: Yes.

2 MR. ASHTIANI: Which I had also cited as
3 *Shelly versus Continental Micronesia*. And that also
4 happened prior in that case, which I do have a copy of
5 that decision and order I'd like to --

6 THE COURT: No, wait. I see it. But you also
7 filed a pleading caption "Pleading to Defendant's
8 Counsel in Future Communications in Reasonable Time in
9 Good Faith." I'm taking that as a motion, okay, that's
10 the way I'm interpreting it. And I'll give you an
11 opportunity to explain it later on if need be, if you
12 can't explain it in writing.

13 I think that should do it for now. Let's see
14 how the case evolves, let's see what the discovery
15 brings. So, let's just follow their scheduling order.

16 MR. ASHTIANI: Yes, Your Honor. I do respect
17 your advice and we'll go with March then.

18 THE COURT: And I said before, it's not set
19 in concrete. If for some reason there's not much
20 discovery and you still feel you would like to have a
21 trial sooner, I will entertain a motion from you.
22 Okay? It doesn't mean I'm going to grant it; it just
23 means that I'm going to allow you to file it so I can
24 consider it.

25 I do need to inform you, Mr. Ashtiani, that

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1 you are representing yourself *pro se*, and while I'm
2 fully appreciative of the fact that you're not a
3 lawyer, you're not trained as a lawyer, I need to also
4 inform you of the fact that I need to treat both sides
5 fairly, okay?

6 MR. ASHTIANI: Thank you.

7 THE COURT: So you will have to present your
8 case, you will have to make your case, okay? I cannot
9 be coaching you from the bench when I'm presiding over
10 the case. So that being the case, if you can get
11 yourself a lawyer, that will be really help us out. If
12 you're going to proceed by yourself, try to prepare as
13 thoroughly as you possibly can.

14 Is there anything else?

15 MS. McDONALD: Nothing further from defendant,
16 thank you.

17 THE COURT: Okay. I think we've got a good
18 handle on this for now. So file your amended complaint
19 and then she'll file whatever other motions she's got.

20 MR. ASHTIANI: And the initial disclosure is
21 on hold at this point; correct, Your Honor?

22 THE COURT: Yes. Well, let's follow the
23 discovery -- the scheduling order that's been proposed
24 by the defense. Okay? Let's just follow that, so we
25 have this game plan for now.

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1 MR. ASHTIANI: Okay.

2 THE COURT: If you want, if you feel there's
3 more time necessary, you can always make a motion for
4 enlargement of time, that is, for additional time. But
5 let's just have something that's a guide of the things
6 that are to happen; we need that badly at this point in
7 time.

8 MR. ASHTIANI: Yes, Your Honor.

9 THE COURT: But get your amended complaint in,
10 have it filed in two weeks time, or sooner if you can;
11 the sooner the better. But by no means should you rush
12 just to get it in, be as thorough as you can.

13 MR. ASHTIANI: So I have, in two weeks, Your
14 Honor, I have two things before me; one is amended
15 complaint, and one is initial disclosure, which is
16 14 days after the scheduling conference, per Rule
17 26(a)(1)?

18 THE COURT: Correct.

19 MR. ASHTIANI: Okay. Thank you, Your Honor.

20 THE COURT: Well, thank you very much. I
21 appreciate your coming here.

22 MS. McDONALD: Thank you, Your Honor.

23 MR. ASHTIANI: Thank you, sir. Thank you for
24 having us.

25 (Proceedings concluded at 4:47 p.m.)

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3 CERTIFICATE OF REPORTER

4
5 CITY OF AGANA)

6 TERRITORY OF GUAM) ss.
7

8 I, Wanda M. Miles, Official Court Reporter
9 of the District Court of Guam, do hereby certify the
10 foregoing pages 1-15, inclusive, to be a true and
11 correct transcript of the shorthand notes taken by me
12 of the within-entitled proceedings, at the date and
13 time therein set forth.

14 Dated this 20th day of June, 2003.

15
16 Wanda M. Miles

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